

By: Representative Fleming

To: Select Committee on  
Civil Justice Reform

HOUSE BILL NO. 5

1 AN ACT TO AMEND SECTIONS 11-11-3, 11-11-5, 11-11-7, 11-11-11  
2 AND 11-11-13, MISSISSIPPI CODE OF 1972, TO REVISE VENUE IN CIVIL  
3 ACTIONS; TO CLARIFY JOINDER OF CLAIMS; TO AMEND SECTION 11-46-1,  
4 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT CERTAIN MEDICAL  
5 PRACTITIONERS ARE EMPLOYEES UNDER THE TORT CLAIMS ACT; TO CREATE  
6 SECTION 11-1-62, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
7 PHYSICIANS AND PHARMACISTS SHALL NOT BE LIABLE FOR PRESCRIBING FDA  
8 APPROVED DRUGS; TO CREATE SECTION 11-1-64, MISSISSIPPI CODE OF  
9 1972, TO INSULATE INNOCENT SELLERS OF PRODUCTS; TO AMEND SECTION  
10 11-1-63, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND  
11 SECTION 15-1-36, MISSISSIPPI CODE OF 1972, TO REDUCE THE PERIOD  
12 FOR COMMENCING A MALPRACTICE ACTION AGAINST A NURSING FACILITY; TO  
13 PROVIDE A NINETY-DAY NOTICE FOR MEDICAL MALPRACTICE ACTIONS; TO  
14 AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
15 PERSONS COVERED UNDER THE TORT CLAIMS ACT ARE ONLY LIABLE FOR THE  
16 PERCENTAGE OF THEIR FAULT IN CIVIL ACTIONS; TO PROVIDE THAT  
17 PAYMENTS FROM COLLATERAL SOURCES SHALL BE REDUCED FROM AWARDS IN  
18 CIVIL ACTIONS; TO REQUIRE AFFIDAVITS IN MEDICAL MALPRACTICE  
19 ACTIONS; TO PROVIDE FOR PERIODIC PAYMENTS FOR AWARDS OF \$50,000.00  
20 OR MORE; TO PROVIDE A LIMITATION ON THE AWARD OF NONECONOMIC  
21 DAMAGES; TO CREATE A MEDICAL MALPRACTICE RISK POOL TO PROVIDE  
22 NECESSARY MEDICAL MALPRACTICE FOR CERTAIN HEALTH CARE PROVIDERS;  
23 TO AMEND SECTION 43-13-407, MISSISSIPPI CODE OF 1972, TO PROVIDE  
24 INITIAL FUNDING FOR THE MEDICAL MALPRACTICE RISK POOL; TO AMEND  
25 SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM  
26 MEDICAL RECORDS; TO CREATE SECTION 43-11-16, MISSISSIPPI CODE OF  
27 1972, TO PROVIDE THAT MEDICAL RECORDS SHALL REMAIN THE PROPERTY OF  
28 THE INSTITUTIONS FOR THE AGED AND INFIRM, SUBJECT TO REASONABLE  
29 ACCESS TO THE INFORMATION CONTAINED THEREIN UPON GOOD CAUSE SHOWN  
30 BY THE RESIDENT, HIS PERSONAL REPRESENTATIVES OR HEIRS; TO CREATE  
31 THE MEDICAL MALPRACTICE MEDIATION BOARD AND PROVIDE FOR ITS  
32 MEMBERSHIP; TO PROVIDE FOR MEDIATION FOR MEDICAL MALPRACTICE AND  
33 NURSING FACILITY DISPUTES; TO PROVIDE FOR THE APPOINTMENT AND  
34 CERTIFICATION OF MEDIATORS; TO PROVIDE THAT MEDIATION SHALL BE  
35 NONBINDING UNLESS THE PARTIES AGREE TO MAKE IT BINDING; TO REQUIRE  
36 THE COMMISSIONER OF INSURANCE TO ANNUALLY COMPILE AND PROVIDE TO  
37 THE LEGISLATURE A REPORT REGARDING MEDICAL MALPRACTICE CLAIMS; TO  
38 PROVIDE INCENTIVE FOR MEDICAL SCHOOL GRADUATES TO PRACTICE IN THE  
39 STATE; TO PROVIDE IMMUNITY FOR MEDICAL PERSONNEL PROVIDING  
40 VOLUNTEER SERVICE TO SCHOOL PROGRAMS; AND FOR RELATED PURPOSES.

41 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

42 **SECTION 1.** Section 11-11-3, Mississippi Code of 1972, is  
43 amended as follows:

44 11-11-3. (1) Civil actions of which the circuit court has  
45 original jurisdiction shall be commenced in the county in which  
46 the defendant resides or in the county where the cause of action



47 may occur or accrue and, if the defendant is a domestic  
48 corporation, in the county in which said corporation is domiciled  
49 or in the county where the cause of action may occur or accrue,  
50 except where otherwise provided, and except actions of trespass on  
51 land, ejectment and actions for the statutory penalty for cutting  
52 and boxing trees and firing woods and actions for the actual value  
53 of trees cut which shall be brought in the county where the land  
54 or some part thereof is situated. If a civil action is brought in  
55 an improper county, such action may be transferred to the proper  
56 county pursuant to Section 11-11-17.

57 (2) In any civil action brought in the courts of this state,  
58 venue must be proper as to each and every named defendant and  
59 plaintiff unless the plaintiffs assert a claim to relief out of  
60 the same transaction or occurrence brought in the county and  
61 judicial district which has the greatest connection to the events  
62 or omissions giving rise to the cause of action occurred or in  
63 which a substantial part of property which is the subject of the  
64 action is situated. In other cases where the claims may be  
65 properly joined, such as cases involving the existence of a  
66 substantial number of common questions of law or material fact,  
67 venue shall be proper only if venue would be proper as to each  
68 plaintiff if the plaintiff filed the case as the only plaintiff  
69 and as to each defendant as if the defendant were the only  
70 defendant. If the venue is improper as to any party, then the  
71 claims involving that party shall be severed and transferred to a  
72 county where venue is proper as to such claims.

73 **SECTION 2.** Section 11-11-5, Mississippi Code of 1972, is  
74 amended as follows:

75 11-11-5. Actions against any railroad, express, steamboat,  
76 power, superpower, telegraph or telephone corporation, or against  
77 individuals owning, managing, operating or controlling a railroad,  
78 express line or route, steamboat, power, superpower, telephone or  
79 telegraph line, or against any corporation or individuals owning,



80 managing, operating or controlling a motor transportation line for  
81 the conveyance of passengers, freight or express, for hire, over  
82 the highways in the State of Mississippi, may be brought in the  
83 county where the cause of action accrued or in the county where  
84 the defendant has its principal place of business \* \* \* at the  
85 time that the cause of action accrued.

86 **SECTION 3.** Section 11-11-7, Mississippi Code of 1972, is  
87 amended as follows:

88 11-11-7. Actions against insurance companies, groups of  
89 insurance companies or an insurance association may be brought in  
90 any county in which a loss may occur, or, if on a life policy, in  
91 the county in which the beneficiary resides, and process may be  
92 sent to any county, to be served as directed by law. Such actions  
93 may also be brought in the county where the principal place of  
94 business of such corporation or company may be. In case of a  
95 foreign corporation or company, such actions may be brought in the  
96 county where service of process may be had on an agent of such  
97 corporation or company or service of process in any suit or  
98 action, or any other legal process, may be served upon the  
99 Insurance Commissioner of the State of Mississippi, and such  
100 notice will confer jurisdiction on any court in any county in the  
101 state where the suit is filed, provided the suit is brought in the  
102 county where the loss occurred \* \* \*.

103 **SECTION 4.** Section 11-11-11, Mississippi Code of 1972, is  
104 amended as follows:

105 11-11-11. Any civil action for the recovery of damages  
106 brought against a nonresident or the representative of the  
107 nonresident in the State of Mississippi may be commenced in the  
108 county in which the action accrued \* \* \*, except as otherwise  
109 provided by law.

110 **SECTION 5.** Section 11-11-13, Mississippi Code of 1972, is  
111 amended as follows:



112           11-11-13. The venue of an action for damages brought against  
113 a nonresident arising from his operation, either in person or by  
114 agent or employee, of a motor vehicle upon any public street,  
115 road, or highway of this state, or elsewhere in this state, shall  
116 be \* \* \* in the county where the cause of action accrued \* \* \*.

117           **SECTION 6.** Section 11-46-1, Mississippi Code of 1972, is  
118 amended as follows:

119           11-46-1. As used in this chapter the following terms shall  
120 have the meanings herein ascribed unless the context otherwise  
121 requires:

122           (a) "Claim" means any demand to recover damages from a  
123 governmental entity as compensation for injuries.

124           (b) "Claimant" means any person seeking compensation  
125 under the provisions of this chapter, whether by administrative  
126 remedy or through the courts.

127           (c) "Board" means the Mississippi Tort Claims Board.

128           (d) "Department" means the Department of Finance and  
129 Administration.

130           (e) "Director" means the executive director of the  
131 department who is also the executive director of the board.

132           (f) "Employee" means any officer, employee or servant  
133 of the State of Mississippi or a political subdivision of the  
134 state, including elected or appointed officials and persons acting  
135 on behalf of the state or a political subdivision in any official  
136 capacity, temporarily or permanently, in the service of the state  
137 or a political subdivision whether with or without compensation.  
138 The term "employee" shall not mean a person or other legal entity  
139 while acting in the capacity of an independent contractor under  
140 contract to the state or a political subdivision; provided,  
141 however, that for purposes of the limits of liability provided for  
142 in Section 11-46-15, the term "employee" shall include physicians  
143 under contract to provide health services with the State Board of  
144 Health, the State Board of Mental Health or any county or



145 municipal jail facility while rendering services under such  
146 contract. The term "employee" shall also include any physician,  
147 dentist or other medical practitioner under contract or affiliated  
148 with or employed by the University of Mississippi Medical Center,  
149 its departmental practice plans, or who practices on the campus of  
150 any university under the control of the Board of Trustees of State  
151 Institutions of Higher Learning only for the purposes of acting  
152 within the course and scope of their contract, affiliation or  
153 employment. The term "employee" shall also include any physician,  
154 dentist or other medical practitioner under contract or affiliated  
155 with or employed by the State Veterans Affairs Board only for the  
156 purposes of acting within the course and scope of their contract,  
157 affiliation or employment. The term "employee" shall also include  
158 Mississippi Department of Human Services licensed foster parents  
159 for the limited purposes of coverage under the Tort Claims Act as  
160 provided in Section 11-46-8.

161 (g) "Governmental entity" means and includes the state  
162 and political subdivisions as herein defined.

163 (h) "Injury" means death, injury to a person, damage to  
164 or loss of property or any other injury that a person may suffer  
165 that is actionable at law or in equity.

166 (i) "Political subdivision" means any body politic or  
167 body corporate other than the state responsible for governmental  
168 activities only in geographic areas smaller than that of the  
169 state, including but not limited to any county, municipality,  
170 school district, community hospital as defined in Section  
171 41-13-10, Mississippi Code of 1972, airport authority or other  
172 instrumentality thereof, whether or not such body or  
173 instrumentality thereof has the authority to levy taxes or to sue  
174 or be sued in its own name.

175 (j) "State" means the State of Mississippi and any  
176 office, department, agency, division, bureau, commission, board,  
177 institution, hospital, college, university, airport authority or



178 other instrumentality thereof, whether or not such body or  
179 instrumentality thereof has the authority to levy taxes or to sue  
180 or be sued in its own name.

181 (k) "Law" means all species of law including but not  
182 limited to any and all constitutions, statutes, case law, common  
183 law, customary law, court order, court rule, court decision, court  
184 opinion, court judgment or mandate, administrative rule or  
185 regulation, executive order, or principle or rule of equity.

186 **SECTION 7.** The following shall be codified as Section  
187 11-1-62, Mississippi Code of 1972:

188 11-1-62. In any civil action alleging damages caused by a  
189 prescription drug and absent any negligence on the part of the  
190 physician or pharmacist, a physician or pharmacist shall be  
191 indemnified by the manufacturer of the prescription drug for any  
192 damages if the federal Food and Drug Administration (FDA) has  
193 approved that drug for treatment of the condition, disease or  
194 illness for which the drug was prescribed. It is the intent of  
195 this section to indemnify innocent physicians and pharmacists who  
196 are not actively negligent from forum-driven lawsuits and that, as  
197 to any claim brought against a physician under this section, the  
198 physician's insurer shall not count such claim against the  
199 physician for the purposes of insurance underwriting or, in any  
200 way, increase premiums for or deny insurance coverage.

201 **SECTION 8.** Section 11-1-63, Mississippi Code of 1972, is  
202 amended as follows:

203 11-1-63. In any action for damages caused by a product  
204 except for commercial damage to the product itself:

205 (a) Subject to the provisions of Section 11-1-62, the  
206 manufacturer, seller, distributor or prescriber of the product  
207 shall not be liable if the claimant does not prove by the  
208 preponderance of the evidence that at the time the product left  
209 the control of the manufacturer, seller, distributor or  
210 prescriber:



211 (i) 1. The product was defective because it  
212 deviated in a material way from the manufacturer's specifications  
213 or from otherwise identical units manufactured to the same  
214 manufacturing specifications, or

215 2. The product was defective because it  
216 failed to contain adequate warnings or instructions, or

217 3. The product was designed in a defective  
218 manner, or

219 4. The product breached an express warranty  
220 or failed to conform to other express factual representations upon  
221 which the claimant justifiably relied in electing to use the  
222 product; and

223 (ii) The defective condition rendered the product  
224 unreasonably dangerous to the user or consumer; and

225 (iii) The defective and unreasonably dangerous  
226 condition of the product proximately caused the damages for which  
227 recovery is sought.

228 (b) A product is not defective in design or formulation  
229 if the harm for which the claimant seeks to recover compensatory  
230 damages was caused by an inherent characteristic of the product  
231 which is a generic aspect of the product that cannot be eliminated  
232 without substantially compromising the product's usefulness or  
233 desirability and which is recognized by the ordinary person with  
234 the ordinary knowledge common to the community.

235 (c) (i) In any action alleging that a product is  
236 defective because it failed to contain adequate warnings or  
237 instructions pursuant to paragraph (a)(i)2 of this section, the  
238 manufacturer, seller, distributor or prescriber shall not be  
239 liable if the claimant does not prove by the preponderance of the  
240 evidence that at the time the product left the control of the  
241 manufacturer, seller, distributor or prescriber, the manufacturer,  
242 seller, distributor or prescriber knew or in light of reasonably  
243 available knowledge should have known about the danger that caused



244 the damage for which recovery is sought and that the ordinary user  
245 or consumer would not realize its dangerous condition.

246 (ii) An adequate product warning or instruction is  
247 one that a reasonably prudent person in the same or similar  
248 circumstances would have provided with respect to the danger and  
249 that communicates sufficient information on the dangers and safe  
250 use of the product, taking into account the characteristics of,  
251 and the ordinary knowledge common to an ordinary consumer who  
252 purchases the product; or in the case of a prescription drug,  
253 medical device or other product that is intended to be used only  
254 under the supervision of a physician or other licensed  
255 professional person, taking into account the characteristics of,  
256 and the ordinary knowledge common to, a physician or other  
257 licensed professional who prescribes the drug, device or other  
258 product.

259 (d) For purposes of this section:

260 (i) "Seller" means any person or entity that sells  
261 products of any kind.

262 (ii) "Prescriber" means any person licensed by the  
263 State of Mississippi to prescribe medicine.

264 (e) In any action alleging that a product is defective  
265 pursuant to paragraph (a) of this section, the manufacturer,  
266 seller, distributor or prescriber shall not be liable if the  
267 claimant (i) had knowledge of a condition of the product that was  
268 inconsistent with his safety; (ii) appreciated the danger in the  
269 condition; and (iii) deliberately and voluntarily chose to expose  
270 himself to the danger in such a manner to register assent on the  
271 continuance of the dangerous condition.

272 (f) In any action alleging that a product is defective  
273 pursuant to paragraph (a)(i)2 of this section, the manufacturer,  
274 seller, distributor or prescriber shall not be liable if the  
275 danger posed by the product is known or is open and obvious to the  
276 user or consumer of the product, or should have been known or open





277 and obvious to the user or consumer of the product, taking into  
278 account the characteristics of, and the ordinary knowledge common  
279 to, the persons who ordinarily use or consume the product.

280         (g) In any action alleging that a product is defective  
281 because of its design pursuant to paragraph (a)(i)3 of this  
282 section, the manufacturer or product seller shall not be liable if  
283 the claimant does not prove by the preponderance of the evidence  
284 that at the time the product left the control of the manufacturer  
285 or seller:

286                 (i) The manufacturer, seller, distributor or  
287 prescriber knew, or in light of reasonably available knowledge or  
288 in the exercise of reasonable care should have known, about the  
289 danger that caused the damage for which recovery is sought; and

290                 (ii) The product failed to function as expected  
291 and there existed a feasible design alternative that would have to  
292 a reasonable probability prevented the harm. A feasible design  
293 alternative is a design that would have to a reasonable  
294 probability prevented the harm without impairing the utility,  
295 usefulness, practicality or desirability of the product to users  
296 or consumers.

297         (h) (i) The manufacturer of a product who is found  
298 liable for a defective product pursuant to subsection (a) shall  
299 indemnify a product seller, distributor or prescriber for the  
300 costs of litigation, any reasonable expenses, reasonable  
301 attorney's fees and any damages awarded by the trier of fact  
302 unless the seller, distributor or prescriber exercised substantial  
303 control over that aspect of the design, testing, manufacture,  
304 packaging or labeling of the product that caused the harm for  
305 which recovery of damages is sought; the seller, distributor or  
306 prescriber altered or modified the product, and the alteration or  
307 modification was a substantial factor in causing the harm for  
308 which recovery of damages is sought; the seller, distributor or  
309 prescriber had actual knowledge of the defective condition of the



310 product at the time he supplied same; or the seller, distributor  
311 or prescriber made an express factual representation about the  
312 aspect of the product which caused the harm for which recovery of  
313 damages is sought.

314 (ii) Subparagraph (i) shall not apply unless the  
315 seller, distributor or prescriber has given prompt notice of the  
316 suit to the manufacturer within thirty (30) days of the filing of  
317 the complaint against the seller.

318 (i) Nothing in this section shall be construed to  
319 eliminate any common law defense to an action for damages caused  
320 by a product.

321 **SECTION 9.** The following shall be codified as Section  
322 11-1-64, Mississippi Code of 1972:

323 11-1-64. (1) In any civil action alleging damages caused by  
324 a product, a product seller other than a manufacturer shall not be  
325 liable for a latent defect if the seller is a mere conduit who  
326 purchased the product from a reputable manufacturer. It is the  
327 intent of this section to insulate innocent sellers who are not  
328 actively negligent from forum driven lawsuits.

329 (2) A product seller shall not be considered to have failed  
330 to exercise reasonable care with respect to a product based upon  
331 an alleged failure to inspect the product, if there was no  
332 reasonable opportunity to inspect the product; or the inspection,  
333 in the exercise of reasonable care, would not have revealed that  
334 the product was defective.

335 (3) Nothing in this section shall be construed to eliminate  
336 any common law defense to an action for damages caused by a  
337 product.

338 **SECTION 10.** Section 15-1-36, Mississippi Code of 1972, is  
339 amended as follows:

340 15-1-36. (1) For any claim accruing on or before June 30,  
341 1998, and except as otherwise provided in this section, no claim  
342 in tort may be brought against a licensed physician, osteopath,



343 dentist, hospital, nursing facility, nurse, pharmacist,  
344 podiatrist, optometrist or chiropractor for injuries or wrongful  
345 death arising out of the course of medical, surgical or other  
346 professional services unless it is filed within two (2) years from  
347 the date the alleged act, omission or neglect shall or with  
348 reasonable diligence might have been first known or discovered.

349 (2) For any claim accruing on or after July 1, 1998, and  
350 except as otherwise provided in this section, no claim in tort may  
351 be brought against a licensed physician, osteopath, dentist,  
352 hospital, nursing facility, nurse, pharmacist, podiatrist,  
353 optometrist or chiropractor for injuries or wrongful death arising  
354 out of the course of medical, surgical or other professional  
355 services unless it is filed within two (2) years from the date the  
356 alleged act, omission or neglect shall or with reasonable  
357 diligence might have been first known or discovered, and, except  
358 as described in paragraphs (a) and (b) of this subsection, in no  
359 event more than seven (7) years after the alleged act, omission or  
360 neglect occurred:

361 (a) In the event a foreign object introduced during a  
362 surgical or medical procedure has been left in a patient's body,  
363 the cause of action shall be deemed to have first accrued at, and  
364 not before, the time at which the foreign object is, or with  
365 reasonable diligence should have been, first known or discovered  
366 to be in the patient's body.

367 (b) In the event the cause of action shall have been  
368 fraudulently concealed from the knowledge of the person entitled  
369 thereto, the cause of action shall be deemed to have first accrued  
370 at, and not before, the time at which such fraud shall be, or with  
371 reasonable diligence should have been, first known or discovered.

372 (3) Except as otherwise provided in subsection (4) of this  
373 section, if at the time at which the cause of action shall or with  
374 reasonable diligence might have been first known or discovered,  
375 the person to whom such claim has accrued shall be six (6) years



376 of age or younger, then such minor or the person claiming through  
377 such minor may, notwithstanding that the period of time limited  
378 pursuant to subsections (1) and (2) of this section shall have  
379 expired, commence action on such claim at any time within two (2)  
380 years next after the time at which the minor shall have reached  
381 his sixth birthday, or shall have died, whichever shall have first  
382 occurred.

383 (4) If at the time at which the cause of action shall or  
384 with reasonable diligence might have been first known or  
385 discovered, the person to whom such claim has accrued shall be a  
386 minor without a parent or legal guardian, then such minor or the  
387 person claiming through such minor may, notwithstanding that the  
388 period of time limited pursuant to subsections (1) and (2) of this  
389 section shall have expired, commence action on such claim at any  
390 time within two (2) years next after the time at which the minor  
391 shall have a parent or legal guardian or shall have died,  
392 whichever shall have first occurred; provided, however, that in no  
393 event shall the period of limitation begin to run prior to such  
394 minor's sixth birthday unless such minor shall have died.

395 (5) If at the time at which the cause of action shall or  
396 with reasonable diligence might have been first known or  
397 discovered, the person to whom such claim has accrued shall be  
398 under the disability of unsoundness of mind, then such person or  
399 the person claiming through him may, notwithstanding that the  
400 period of time hereinbefore limited shall have expired, commence  
401 action on such claim at any time within two (2) years next after  
402 the time at which the person to whom the right shall have first  
403 accrued shall have ceased to be under the disability, or shall  
404 have died, whichever shall have first occurred.

405 (6) When any person who shall be under the disabilities  
406 mentioned in subsections (3), (4) and (5) of this section at the  
407 time at which his right shall have first accrued, shall depart  
408 this life without having ceased to be under such disability, no



409 time shall be allowed by reason of the disability of such person  
410 to commence action on the claim of such person beyond the period  
411 prescribed under Section 15-1-55, Mississippi Code of 1972.

412 (7) For the purposes of subsection (3) of this section, and  
413 only for the purposes of such subsection, the disability of  
414 infancy or minority shall be removed from and after a person has  
415 reached his sixth birthday.

416 (8) For the purposes of subsection (4) of this section, and  
417 only for the purposes of such subsection, the disability of  
418 infancy or minority shall be removed from and after a person has  
419 reached his sixth birthday or from and after such person shall  
420 have a parent or legal guardian, whichever occurs later, unless  
421 such disability is otherwise removed by law.

422 (9) The limitation established by this section as to a  
423 licensed physician, osteopath, dentist, hospital or nurse shall  
424 apply only to actions the cause of which accrued on or after July  
425 1, 1976.

426 (10) The limitation established by this section as to  
427 pharmacists shall apply only to actions the cause of which accrued  
428 on or after July 1, 1978.

429 (11) The limitation established by this section as to  
430 podiatrists shall apply only to actions the cause of which accrued  
431 on or after July 1, 1979.

432 (12) The limitation established by this section as to  
433 optometrists and chiropractors shall apply only to actions the  
434 cause of which accrued on or after July 1, 1983.

435 (13) The limitation established by this section as to  
436 actions commenced on behalf of minors shall apply only to actions  
437 the cause of which accrued on or after July 1, 1989.

438 (14) The limitation established by this section as to  
439 nursing facilities shall apply only to actions the cause of which  
440 accrued after the passage of House Bill No. \_\_\_\_\_, Third  
441 Extraordinary Session of 2002.



442       (15) No action based upon the health care provider's  
443 professional negligence may be begun unless the defendant has been  
444 given at least ninety (90) days' prior notice of the intention to  
445 begin the action. No particular form of notice is required, but  
446 it shall notify the defendant of the legal basis of the claim and  
447 the type of loss sustained, including with specificity the nature  
448 of the injuries suffered. If the notice is served within ninety  
449 (90) days of the expiration of the applicable statute of  
450 limitations, the time for the beginning of the action shall be  
451 extended ninety (90) days from the service of the notice. This  
452 subsection shall not be applicable with respect to any defendant  
453 whose name is unknown to the plaintiff at the time of filing the  
454 complaint and who is identified therein by a fictitious name.

455       **SECTION 11.** Section 85-5-7, Mississippi Code of 1972, is  
456 amended as follows:

457       85-5-7. (1) As used in this section "fault" means an act or  
458 omission of a person which is a proximate cause of injury or death  
459 to another person or persons, damages to property, tangible or  
460 intangible, or economic injury, including but not limited to  
461 negligence, malpractice, strict liability, absolute liability or  
462 failure to warn. "Fault" shall not include any tort which results  
463 from an act or omission committed with a specific wrongful intent.

464       (2) Except as may be otherwise provided in subsection (6) of  
465 this section, in any civil action based on fault, the liability  
466 for damages caused by two (2) or more persons shall be joint and  
467 several only to the extent necessary for the person suffering  
468 injury, death or loss to recover fifty percent (50%) of his  
469 recoverable damages, except as the liability for damages caused by  
470 any persons covered under the provisions of Section 11-46-1 et  
471 seq. shall be limited to such person's own percentage of fault.

472       (3) Except as otherwise provided in subsections (2) and (6)  
473 of this section, in any civil action based on fault, the liability  
474 for damages caused by two (2) or more persons shall be several



475 only, and not joint and several and a joint tortfeasor shall be  
476 liable only for the amount of damages allocated to him in direct  
477 proportion to his percentage of fault. In assessing percentages  
478 of fault an employer and the employer's employee or a principal  
479 and the principal's agent shall be considered as one (1) defendant  
480 when the liability of such employer or principal has been caused  
481 by the wrongful or negligent act or omission of the employee or  
482 agent.

483 (4) Any defendant held jointly liable under this section  
484 shall have a right of contribution against fellow joint  
485 tortfeasors. A defendant shall be held responsible for  
486 contribution to other joint tortfeasors only for the percentage of  
487 fault assessed to such defendant.

488 (5) Nothing in this section shall eliminate or diminish any  
489 defenses or immunities which currently exist, except as expressly  
490 noted herein.

491 (6) Joint and several liability shall be imposed on all who  
492 consciously and deliberately pursue a common plan or design to  
493 commit a tortious act, or actively take part in it. Any person  
494 held jointly and severally liable under this section shall have a  
495 right of contribution from his fellow defendants acting in  
496 concert.

497 (7) In actions involving joint tortfeasors, the trier of  
498 fact shall determine the percentage of fault for each party  
499 alleged to be at fault.

500 (8) Nothing in this section shall be construed to create a  
501 cause of action. Nothing in this section shall be construed, in  
502 any way, to alter the immunity of any person.

503 **SECTION 12.** After the jury makes an award in an action for  
504 personal injury against a health care provider based upon  
505 professional negligence, the defendant may present to the  
506 presiding judge evidence of any amount payable as a benefit to the  
507 plaintiff as a result of the personal injury under the United



508 States Social Security Act, any state or federal income disability  
509 or worker's compensation act, any health, sickness or  
510 income-disability insurance, accident insurance that provides  
511 health benefits or income-disability coverage and any contract or  
512 agreement of any group, organization, partnership or corporation  
513 to provide, pay for or reimburse the cost of medical, hospital,  
514 dental or other health care services. If the defendant elects to  
515 present such evidence, the plaintiff may introduce evidence of any  
516 amount which the plaintiff has paid or contributed to secure his  
517 right to these insurance benefits. The plaintiff may also  
518 introduce evidence of any leave time lost due to the personal  
519 injury. The presiding judge shall reduce the jury award by no  
520 more than half of the amount of such benefits less any amount  
521 which the plaintiff has paid or contributed to secure such  
522 benefits.

523 "Health care provider" means an individual licensed,  
524 certified or otherwise authorized or permitted by law to provide  
525 health care in the ordinary course of business or practice of a  
526 profession. "Health care provider" also means any hospital or  
527 nursing facility.

528 "Professional negligence" means a negligent act or omission  
529 to act by a health care provider in the rendering of professional  
530 services, which act or omission is the proximate cause of a  
531 personal injury or wrongful death, provided that such services are  
532 within the scope of services for which the provider is licensed  
533 and which are not within any restriction imposed by the licensing  
534 agency or licensed hospital.

535 **SECTION 13.** Before any action for medical malpractice may be  
536 brought, the attorney bringing such action shall sign an affidavit  
537 as an officer of the court stating that he has had his case  
538 reviewed by a medical expert and the medical expert has determined  
539 that medical malpractice is evident in such action.





540           SECTION 14. (1) In any action for injury or damages against  
541 a provider of health care services, the court shall, at the  
542 request of either party, enter a judgment ordering that money  
543 damages or its equivalent for future damages of the judgment  
544 creditor be paid in whole or in part by periodic payments rather  
545 than by a lump-sum payment if the award equals or exceeds Fifty  
546 Thousand Dollars (\$50,000.00) in future damages. In entering a  
547 judgment ordering the payment of future damages by periodic  
548 payments, the court shall make a specific finding as to the dollar  
549 amount of periodic payments which will compensate the judgment  
550 creditor for such future damages. As a condition to authorizing  
551 period payments of future damages, the court shall require the  
552 judgment debtor who is not adequately insured to post security  
553 adequate to assure full payment of such damages awarded by the  
554 judgment. Upon termination of periodic payments of future  
555 damages, the court shall order the return of this security, or so  
556 much as remains, to the judgment debtor.

557           (2) (a) The judgment ordering the payment of future damages  
558 by periodic payments shall specify the recipient or recipients of  
559 the payments, the dollar amount of the payments, the interval  
560 between payments, and the number of payments or the period of time  
561 over which payments shall be made. Such payments shall only be  
562 subject to modification in the event of the death of the judgment  
563 creditor.

564           (b) In the event that the court finds that the judgment  
565 debtor has exhibited a continuing pattern of failing to make the  
566 payments, as specified in paragraph (a), the court shall find the  
567 judgment debtor in contempt of court and, in addition to the  
568 required periodic payments, shall order the judgment debtor to pay  
569 the judgment creditor all damages caused by the failure to make  
570 such period payments, including court costs and attorney's fees.

571           (3) However, money damages awarded for loss of future  
572 earnings shall not be reduced or payments terminated by reason of



573 the death of the judgment creditor, but shall be paid to persons  
574 to whom the judgment creditor owed a duty of support, as provided  
575 by law, immediately prior to his death. In such cases the court  
576 which rendered the original judgment, may, upon petition of any  
577 party in interest, modify the judgment to award and apportion the  
578 unpaid future damages in accordance with this subsection.

579 (4) Following the occurrence or expiration of all  
580 obligations specified in the periodic payment judgment, any  
581 obligation of the judgment debtor to make further payments shall  
582 cease and any security given, pursuant to subsection (1) shall  
583 revert to the judgment debtor.

584 (5) As used in this section:

585 (a) "Future damages" includes damages for future  
586 medical treatment, care or custody, loss of future earnings, loss  
587 of bodily function, or future pain and suffering of the judgment  
588 creditor.

589 (b) "Periodic payments" means the payment of money or  
590 delivery of other property to the judgment creditor at regular  
591 intervals.

592 (c) "Health care provider" means an individual  
593 licensed, certified, or otherwise authorized or permitted by law  
594 to provide health care in the ordinary course of business or  
595 practice of a profession. "Health care provider" includes the  
596 legal representatives of a health care provider. "Health care  
597 provider" also means any hospital or nursing facility.

598 (d) "Professional negligence means a negligent act or  
599 omission to act by a health care provider in the rendering of  
600 professional services, which act or omission is the proximate  
601 cause of a personal injury or wrongful death, provided that such  
602 services are within the scope of services for which the provider  
603 is licensed and which are not within any restriction imposed by  
604 the licensing agency or licensed hospital.



605           (6) It is the intent of the Legislature in enacting this  
606 section to authorize the entry of judgments in malpractice actions  
607 against health care providers which provide for the payment of  
608 future damages through periodic payments rather than lump-sum  
609 payments. By authorizing periodic payment judgments, it is the  
610 further intent of the Legislature that the courts will utilize  
611 such judgments to provide compensation sufficient to meet the  
612 needs of an injured plaintiff and those persons who are dependent  
613 on the plaintiff for whatever period is necessary while  
614 eliminating the potential windfall from a lump-sum recovery which  
615 was intended to provide for the care of an injured plaintiff over  
616 an extended period who then dies shortly after the judgment is  
617 paid, leaving the balance of the judgment award to persons and  
618 purposes for which it was not intended. It is also the intent of  
619 the Legislature that all elements of the periodic payment program  
620 be specified with certainty in the judgment ordering such payments  
621 and that the judgment not be subject to modification at some  
622 future time which might alter the specifications of the original  
623 judgment.

624           **SECTION 15.** (1) For the purposes of this section, the  
625 following words and phrases shall have the meanings ascribed  
626 herein unless the context clearly requires otherwise:

627           (a) "Noneconomic damages" means subjective,  
628 nonpecuniary damages arising from death, pain, suffering,  
629 inconvenience, physical impairment, disfigurement, mental anguish,  
630 worry, emotional distress, loss of society and companionship, loss  
631 of consortium, bystander injury, injury to reputation,  
632 humiliation, loss of the enjoyment of life, hedonic damages, other  
633 nonpecuniary damages, and any other theory of damages such as fear  
634 of loss, illness or injury. The term "noneconomic damages" shall  
635 not include punitive damages.

636           (b) "Actual economic damages" means objectively  
637 verifiable pecuniary damages arising from medical expenses and



638 medical care, rehabilitation services, custodial care,  
639 disabilities, loss of earnings and earning capacity, loss of  
640 income, burial costs, loss of use of property, costs of repair of  
641 replacement of property, costs of obtaining substitute domestic  
642 services, loss of employment, loss of business or employment  
643 opportunities, and other objectively verifiable monetary losses.

644 (2) (a) In any action for malpractice, negligence, error,  
645 omission, mistake or the unauthorized rendering of professional  
646 services against a provider of health care, the court shall  
647 instruct the jury that in the event they find the defendant  
648 liable, they shall not award the plaintiff more than Eight Hundred  
649 Fifty Thousand Dollars (\$850,000.00) for pain and suffering, loss  
650 of companionship, embarrassment and other items of general damages  
651 unless the judge determines by clear and convincing evidence that  
652 there is substantial or permanent loss or impairment of a bodily  
653 function or substantial disfigurement, or other special  
654 circumstances in the case which warrant a finding that imposition  
655 of such a limitation would deprive the plaintiff of just  
656 compensation for the injuries sustained. In any such action which  
657 is tried without a jury, the court shall not award the plaintiff  
658 more than Eight Hundred Fifty Thousand Dollars (\$850,000.00) for  
659 pain and suffering, loss of companionship, embarrassment and other  
660 items of general damages unless the aforesaid findings are made  
661 specially by the court and stated separately in the judgment  
662 entered by the court. It is the intent of this section to limit  
663 all noneconomic damages to the above.

664 (b) The limitations on damages set forth in this  
665 section shall be adjusted for inflation annually. The adjustment  
666 shall be based on the cumulative annual adjustment for inflation  
667 for each year since the effective date of the damages limitations  
668 in this section. The adjustment made pursuant to this paragraph  
669 shall be rounded upward or downward to the nearest increment of  
670 Ten Dollars (\$10.00).



671 (c) As used in this section, "inflation" means the  
672 annual percentage change in the United States Department of Labor,  
673 Bureau of Labor Statistics, Consumer Price Index for the State of  
674 Mississippi, all items, all urban consumers or its successor  
675 index.

676 (d) The Secretary of State shall certify the adjusted  
677 limitation on damages within fourteen (14) days after the  
678 appropriate information is available.

679 (e) The limitations provided in this section are  
680 contingent upon insurance companies which underwrite medical  
681 malpractice insurance in the state annually passing a projected  
682 savings from the limitations provided in this section to their  
683 customers. The Commissioner of Insurance shall annually report  
684 such projected savings and shall reject any rate increases, if  
685 such savings are not passed on to Mississippi clients during the  
686 previous year.

687 **SECTION 16.** The Commissioner of Insurance shall establish a  
688 medical malpractice risk pool for the purpose of making necessary  
689 medical malpractice insurance available for physicians, registered  
690 nurses and all other personnel who are duly licensed to practice  
691 in a hospital and hospitals. Monies in the amount of One Dollar  
692 (\$1.00) for the initial funding of the Medical Malpractice Risk  
693 Pool shall be drawn from the Health Care Expendable Fund  
694 established in Section 43-13-407. The Commissioner of Insurance  
695 shall promulgate rules and regulations necessary for the operation  
696 of the risk pool.

697 **SECTION 17.** Section 43-13-407, Mississippi Code of 1972, is  
698 amended as follows:

699 43-13-407. (1) In accordance with the purposes of this  
700 article, there is established in the State Treasury the Health  
701 Care Expendable Fund, into which shall be transferred from the  
702 Health Care Trust Fund the following sums:



703                   (a) In fiscal year 2000, Fifty Million Dollars  
704   (\$50,000,000.00);  
705                   (b) In fiscal year 2001, Fifty-five Million Dollars  
706   (\$55,000,000.00);  
707                   (c) In fiscal year 2002, Sixty Million Five Hundred  
708   Thousand Dollars (\$60,500,000.00);  
709                   (d) In fiscal year 2003, Sixty-six Million Five Hundred  
710   Fifty Thousand Dollars (\$66,550,000.00);  
711                   (e) In fiscal year 2004 and each subsequent fiscal  
712   year, a sum equal to the average annual amount of the income from  
713   the investment of the funds in the Health Care Trust Fund since  
714   July 1, 1999.

715           (2) In any fiscal year in which interest and dividends from  
716   the investment of the funds in the Health Care Trust Fund are not  
717   sufficient to fund the full amount of the annual transfer into the  
718   Health Care Expendable Fund as required in subsection (1) of this  
719   section, the State Treasurer shall transfer from tobacco  
720   settlement installment payments an amount that is sufficient to  
721   fully fund the amount of the annual transfer.

722           (3) (a) On March 6, 2002, the State Treasurer shall  
723   transfer the sum of Eighty-seven Million Dollars (\$87,000,000.00)  
724   from the Health Care Trust Fund into the Health Care Expendable  
725   Fund. In addition, at the time the State of Mississippi receives  
726   the 2002 calendar year tobacco settlement installment payment, the  
727   State Treasurer shall deposit the full amount of that installment  
728   payment into the Health Care Expendable Fund.

729           (b) If during any fiscal year after March 6, 2002, the  
730   general fund revenues received by the state exceed the general  
731   fund revenues received during the previous fiscal year by more  
732   than five percent (5%), the Legislature shall repay to the Health  
733   Care Trust Fund one-third (1/3) of the amount of the general fund  
734   revenues that exceed the five percent (5%) growth in general fund  
735   revenues. The repayment required by this paragraph shall continue



736 in each fiscal year in which there is more than five percent (5%)  
737 growth in general fund revenues, until the full amount of the  
738 funds that were transferred and deposited into the Health Care  
739 Expendable Fund under the provisions of paragraph (a) of this  
740 subsection have been repaid to the Health Care Trust Fund.

741 (4) All income from the investment of the funds in the  
742 Health Care Expendable Fund shall be credited to the account of  
743 the Health Care Expendable Fund. Any funds in the Health Care  
744 Expendable Fund at the end of a fiscal year shall not lapse into  
745 the State General Fund.

746 (5) The funds in the Health Care Expendable Fund shall be  
747 available for expenditure under specific appropriation by the  
748 Legislature beginning in fiscal year 2000, and shall be expended  
749 exclusively for health care purposes, including, but not limited  
750 to, the initial funding for the Medical Malpractice Risk Pool  
751 established in House Bill \_\_\_\_\_, 2002 Third Extraordinary  
752 Session.

753 (6) Subsections (1), (2), (4) and (5) of this section shall  
754 stand repealed on July 1, 2004.

755 **SECTION 18.** Section 43-11-1, Mississippi Code of 1972, is  
756 amended as follows:

757 43-11-1. When used in this chapter, the following words  
758 shall have the following meaning:

759 (a) "Institutions for the aged or infirm" means a place  
760 either governmental or private which provides group living  
761 arrangements for four (4) or more persons who are unrelated to the  
762 operator and who are being provided food, shelter and personal  
763 care whether any such place be organized or operated for profit or  
764 not. The term "institution for aged or infirm" includes nursing  
765 homes, pediatric skilled nursing facilities, psychiatric  
766 residential treatment facilities, convalescent homes and homes for  
767 the aged, provided that these institutions fall within the scope  
768 of the definitions set forth above. The term "institution for the



769 aged or infirm" does not include hospitals, clinics or mental  
770 institutions devoted primarily to providing medical service.

771 (b) "Person" means any individual, firm, partnership,  
772 corporation, company, association or joint stock association, or  
773 any licensee herein or the legal successor thereof.

774 (c) "Personal care" means assistance rendered by  
775 personnel of the home to aged or infirm residents in performing  
776 one or more of the activities of daily living, which includes, but  
777 is not limited to, the bathing, walking, excretory functions,  
778 feeding, personal grooming and dressing of such residents.

779 (d) "Psychiatric residential treatment facility" means  
780 any nonhospital establishment with permanent facilities which  
781 provides a 24-hour program of care by qualified therapists  
782 including, but not limited to, duly licensed mental health  
783 professionals, psychiatrists, psychologists, psychotherapists and  
784 licensed certified social workers, for emotionally disturbed  
785 children and adolescents referred to such facility by a court,  
786 local school district or by the Department of Human Services, who  
787 are not in an acute phase of illness requiring the services of a  
788 psychiatric hospital, and are in need of such restorative  
789 treatment services. For purposes of this paragraph, the term  
790 "emotionally disturbed" means a condition exhibiting one or more  
791 of the following characteristics over a long period of time and to  
792 a marked degree, which adversely affects educational performance:

793 1. An inability to learn which cannot be explained  
794 by intellectual, sensory or health factors;

795 2. An inability to build or maintain satisfactory  
796 relationships with peers and teachers;

797 3. Inappropriate types of behavior or feelings  
798 under normal circumstances;

799 4. A general pervasive mood of unhappiness or  
800 depression; or





801                   5. A tendency to develop physical symptoms or  
802 fears associated with personal or school problems. An  
803 establishment furnishing primarily domiciliary care is not within  
804 this definition.

805                   (e) "Pediatric skilled nursing facility" means an  
806 institution or a distinct part of an institution that is primarily  
807 engaged in providing to inpatients skilled nursing care and  
808 related services for persons under twenty-one (21) years of age  
809 who require medical or nursing care or rehabilitation services for  
810 the rehabilitation of injured, disabled or sick persons.

811                   (f) "Licensing agency" means the State Department of  
812 Health.

813                   (g) "Medical records" mean, without restriction, those  
814 medical histories, records, reports, summaries, diagnoses and  
815 prognoses, records of treatment and medication ordered and given,  
816 notes, entries, x-rays and other written or graphic data prepared,  
817 kept, made or maintained in institutions for the aged or infirm  
818 that pertain to residency in, or services rendered to residents  
819 of, an institution for the aged or infirm.

820                   **SECTION 19.** The following shall be codified as Section  
821 43-11-16, Mississippi Code of 1972:

822                   43-11-16. Medical records are and shall remain the property  
823 of the various institutions for the aged and infirm, subject  
824 however to reasonable access to the information contained therein  
825 upon good cause shown by the resident, his personal  
826 representatives, including, but not limited to, legal counsel,  
827 heirs, his attending medical personnel and his duly authorized  
828 nominees, and upon payment of any reasonable charges for such  
829 service. Nothing in this section shall be construed to deny  
830 access to medical records by the licensing agency in the discharge  
831 of its official duties under this chapter. Except as otherwise  
832 provided by law, medical records shall not constitute public  
833 records and nothing in this section shall be deemed to impair any



834 privilege of confidence conferred by law or the Mississippi Rules  
835 of Evidence on residents, their personal representatives or heirs  
836 by Section 13-1-21.

837 **SECTION 20.** (1) There is created the Medical Malpractice  
838 Mediation Board which shall be comprised of the following members:

839 (a) One (1) person appointed by the Governor;

840 (b) One (1) person appointed by the Mississippi Trial  
841 Lawyers Association;

842 (c) One (1) person appointed by the Mississippi Bar;

843 (d) One (1) person appointed by the Magnolia Bar  
844 Association;

845 (e) One (1) person appointed by the Mississippi  
846 Hospital Association;

847 (f) One (1) person appointed by the Mississippi Medical  
848 Association; and

849 (g) One person appointed by the Mississippi Medical and  
850 Surgical Association.

851 (2) All Members of the board shall be entitled to per diem  
852 as provided in Section 25-3-69 and travel expenses as provided in  
853 Section 25-3-41 for the performance of their duties as members of  
854 the board.

855 (3) The board shall elect a chairman and other officers it  
856 deems necessary to carry out the purposes of this act.

857 **SECTION 21.** Before any medical malpractice suit or suit  
858 involving a nursing facility may be brought, the dispute must be  
859 submitted for mediation. The board shall appoint and certify  
860 mediators for such disputes. Mediators shall be members of the  
861 Mississippi Bar who have been engaged in the active practice of  
862 law for a minimum of five (5) years. The mediator shall make  
863 every effort to help parties resolve their dispute in order to  
864 avoid litigation. Mediation shall be informal and rules of Civil  
865 Procedure and Evidence shall be relaxed. Mediation under this act  
866 shall be nonbinding unless the parties agree in writing to make



867 the mediation binding. Any matter which is submitted for  
868 mediation under this act which is not resolved may not be filed as  
869 civil action until ninety (90) days after the termination of  
870 mediation.

871 **SECTION 22.** Sections 20 and 21 of this act shall not be  
872 construed to take away from the courts their power over awards,  
873 nor to make invalid any award good at common law. Sections 20 and  
874 21 of this act shall be liberally construed for the encouragement  
875 of the settlement of disputes and the prevention of litigation.

876 **SECTION 23.** (1) The Commissioner of Insurance annually for  
877 a period of three (3) years shall compile and provide to the  
878 Legislature a report on the number of medical malpractice claims,  
879 the rate being charged for medical malpractice insurance premiums,  
880 the number of physicians leaving the state, the number of medical  
881 malpractice settlements in excess of Thirty Thousand Dollars  
882 (\$30,000.00), and any other issues that the commissioner  
883 determines impact the medical profession.

884 (2) The State Board of Medical Licensure shall publicly and  
885 annually report all medical malpractice investigations referred to  
886 the Attorney General and indicate which doctors have settled  
887 malpractice suits, within the restraints of confidentiality.

888 **SECTION 24.** If any graduate of the University of Mississippi  
889 Medical Center decides to retain residency and practice medicine  
890 in the state upon graduation from any accredited medical doctor  
891 program or nurse practitioner program, then for a period of two  
892 (2) years that physician or nurse practitioner shall be able to  
893 receive from designated state funds an amount not to exceed twenty  
894 percent (20%) of such physician's or nurse practitioner's medical  
895 malpractice premium should those funds be made available by the  
896 Legislature and if the physician's or nurse practitioner's  
897 practice includes a minimum of twenty percent (20%) Medicaid paid  
898 patients.



899           **SECTION 25.** (1) Any licensed physician or certified nurse  
900 practitioner who voluntarily provides needed medical or health  
901 services to any program at an accredited school in the state  
902 without the expectation of payment due to the inability of such  
903 person to pay for said services shall be immune from liability for  
904 any civil action arising out of the provision of such medical or  
905 health services provided in good faith on a charitable basis.  
906 This section shall not extend immunity to acts of willful or gross  
907 negligence. Except in cases of rendering emergency care wherein  
908 the provisions of Section 73-25-37, Mississippi Code of 1972,  
909 apply, immunity under this section shall be extended only if the  
910 physician or certified nurse practitioner and patient execute a  
911 written waiver in advance of the rendering of such medical  
912 services specifying that such services are provided without the  
913 expectation of payment and that the licensed physician or  
914 certified nurse practitioner shall be immune as provided herein.

915           (2) Any physician who voluntarily renders any medical  
916 service under a special volunteer medical license authorized under  
917 Section 73-25-18, or in the aftermath of a natural disaster,  
918 including, but not limited to, hurricanes and tornadoes, without  
919 any payment or compensation or the expectation or promise of any  
920 payment or compensation shall be immune from liability for any  
921 civil action arising out of any act or omission resulting from the  
922 rendering of the medical service unless the act or omission was  
923 the result of the physician's gross negligence or willful  
924 misconduct. In order for the immunity under this subsection to  
925 apply, there must be a written or oral agreement for the physician  
926 to provide a voluntary noncompensated medical service before the  
927 rendering of the service by the physician.

928           **SECTION 26.** This act shall take effect and be in force from  
929 and after its passage and shall apply only to causes of action  
930 accruing on or after that date.

